SENATE BILL NO. 2418

By Haynes

Substituted for: House Bill No. 2778

By Odom

AN ACT To amend Tennessee Code Annotated, Title 27, Chapter 9, relative to the review of a decision of a board or commission that has revoked, suspended or denied a license or permit that is required prior to engaging in conduct protected by the First Amendment to the United States Constitution.

WHEREAS, The United States Court of Appeals for the Sixth Circuit held that Tennessee Code Annotated, Section 27-9-111(e), allows state courts discretion as to whether or not to issue a writ of certiorari and hear an appeal from a decision by a board or commission revoking, suspending or denying a license or permit required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States; and

WHEREAS, The United States Court of Appeals for the Sixth Circuit further held that since the grant of the writ of certiorari remains discretionary in such cases, that Tennessee Code Annotated, Section 27-9-111(e), does not guarantee the petitioner prompt judicial review of the board's or commission's decision, as is required by the First Amendment to the Constitution of the United States; now therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 27-9-111, is amended by deleting the first sentence of subsection (e) and substituting instead the following:

> If the final decision of a board or commission revokes, suspends, or denies a license or permit that is required prior to engaging in conduct protected by the First Amendment to the Constitution of the United States, and either the petitioner or the respondent requests an expedited hearing, the court shall immediately grant the writ of certiorari, and shall hear the matter and issue its decision within forty (40) days of the court granting the writ of certiorari.

SECTION 2. This act shall not take effect until such time as the United States Supreme Court has denied the petition for a writ of certiorari filed by the Metropolitan Government of Nashville and Davidson County in the case of Déjà vu, Inc. v. Metropolitan Government, 274 F.3d 377 (6th Cir. 2001), or if the United States Supreme Court grants a writ of certiorari, this act shall not take effect until such time as the United States Supreme Court affirms the Sixth Circuit's opinion on the issue of "prompt judicial review." If the United States Supreme Court reverses the Sixth Circuit's opinion on "prompt judicial review" this act shall never take effect.